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THE CONSTITUTIONAL BUDGET PROJECT

*An Analysis of the Constitutionality of Several Federal Departments:
Agriculture, Commerce, Education, Energy, Housing and Urban
Development, Interior and Labor*

Prepared by
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Foundation

FY 2012

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The Constitutional Budget Project

A Project of The Conservative Caucus Research, Analysis and Education Foundation

Article I, Section 8 of the United States Constitution lists the governmental functions which were delegated to the Federal government. James Madison, in Federalist 45, stated that “The powers delegated by the proposed Constitution to the federal government are few and defined.”

However, especially since the early twentieth century, the Federal government has steadily expanded its functions beyond those that were delegated. Federal taxes and spending have vastly increased over that same period. Although the Federal courts have occasionally struck down one of these programs, Federal judges have generally chosen to turn a blind eye to the Constitution.

The Constitutional Budget Project of The Conservative Caucus Foundation (TCCF) periodically examines portions of the President’s proposed budget to determine the constitutional status of current spending programs.

This analysis reviews the FY 2012 budgets for the following departments:

- Agriculture
- Commerce
- Education
- Energy
- Housing and Urban Development
- Interior and Labor

Functions Delegated to the Federal Government by the Constitution

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Department of Agriculture

The Department of Agriculture provides assistance to American farmers through direct subsidies (including housing and energy subsidies), subsidized loans, marketing assistance, and research programs. Also included in this Department are some welfare programs, such as food stamps and the National Forest System. The listing of all these programs in the *Fiscal Year 2012 Appendix: Budget of the U.S. Government* takes up more space than the Department of Defense. However, none of these functions are authorized by the Constitution.

The Animal and Plant Health Inspection Service and the Food Safety and Inspection Program, to the extent that they are targeted at imports and interstate commerce, can be legitimate programs. The agencies also work with the Department of Homeland Security to deal with possible terrorist contamination of the food supply. Their budgets, approximately \$1 billion each, are listed as Constitutional.

These two agencies should be able to operate independently, or as part of another Department, without the \$600 billion bureaucracy of the Agriculture Department. Therefore those administrative expenses, used almost entirely to administer unconstitutional programs, have not been counted as Constitutional.

Eliminating these unconstitutional programs would save the U.S. taxpayer \$147 billion in 2012.

Department of Agriculture

ID Code	Program Name	Authorized by Proposed Budget (billions)	Constitutional Amount (billions)
12-9913-0-1-352	Office of the Secretary	18	0
12-0015-0-1-451	Healthy Food Financing Initiative	35	0
12-8203-0-7-352	Gifts and Bequests	1	0
12-0123-0-1-352	Office of the Chief Economist	16	0
12-0706-0-1-352	National Appeals Division	15	0
12-9915-0-1-350	Departmental Management	174	0
12-0500-0-1-304	Hazardous Materials Management	5	0
12-0117-0-1-352	Agriculture Buildings and Facilities and Rental Payments	255	0
12-0150-0-1-352	Office of Communications	10	0
12-0900-0-1-352	Office of the Inspector General	91	0
12-2300-0-1-352	Office of the General Council	46	0
12-1701-0-1-352	Economic Research Service	86	0
12-1801-0-1-352	National Agricultural Statistics Service	165	0
12-1400-0-1-352	Agricultural Research Service	1,138	0
12-8214-0-7-352	Trust Funds: Miscellaneous Contributed Funds	18	0
12-1502-0-1-352	National Institute of Food and Agriculture	100	0
12-1003-0-1-271	Biomass Research and Development	40	0
12-1500-0-1-352	Research and Educational Activities	713	0
12-0502-0-1-352	Extension Activities	491	0
12-1600-0-1-352	Animal and Plant Health Inspection Service	1,080	1,080
12-3700-0-1-554	Food Safety and Inspection Service	1,011	1,011
12-8137-0-7-352	Expenses and Refunds, Inspection and Grading of Farm Products	9	0
12-2400-0-1-352	Grain Inspection, Packers and Stockyards Administration: Salaries and Expenses	44	0
12-2500-0-1-352	Agriculture Marketing Service	106	0
12-2501-0-1-352	Payments to States and Possessions	58	0
12-5070-0-2-352	Perishable Agricultural Commodities Fund	12	0
12-5209-0-2-605	Funds for Strengthening Markets, Income, and Supply (Section 32)	1,079	0
12-8015-0-7-352	Ag Marketing Service: Expenses and Refunds, Inspection and Grading Farm Products	150	0
12-2707-0-1-351	Risk Management Agency: Risk Management Agency	82	0
12-4085-0-3-351	Risk Management Agency: Corporations, Federal Crop Insurance Corporation Fund	3,142	0
12-0600-0-1-351	Farm Service Agency: Salaries and Expenses	1,357	0
12-0600-2-1-351	FSA: Salaries and Expenses	40	0
12-0170-0-1-351	State Mediation Grants	4	0
12--1140-0-1-351	Dairy Indemnity Program	432	0
12-4336-0-3-999	Commodity Credit Corporation Fund	7,428	0
12-1336-0-1-351	Commodity Credit Corporation Export (Loans) Credit Guarantee Program Account	6	0
12-5531-0-2-351	Agricultural Disaster Relief Fund	1,523	0
12-8161-0-7-351	Tobacco Trust Fund	960	0

12-1000-0-1-302	Natural Resources Conservation Service: Conservation Operations	898	0
12-1004-0-1-302	Farm Security and Rural Investment Programs	3,641	0
12-0403-0-1-452	Rural Development: Salaries and Expenses	234	0
12-1953-0-1-604	Rural Housing Assistance Grants	12	0
12-0137-0-1-604	Rental Assistance Program	907	0
12-2002-0-1-604	Multi-Family Housing Revitalization Program Account	16	0
12-1951-0-1-452	Rural Community Facilities Program Account	38	0
12-2081-0-1-371	Rural Housing Insurance Fund Program Account	473	0
12-2073-0-1-452	Rural Business—Cooperative Service: Energy Assistance Payments	105	0
12-1900-0-1-452	Rural Cooperative Development Grants	36	0
12-1955-0-1-452	Rural Microenterprise Investment Program Accounts	9	0
12-1902-0-1-452	Rural Business Program Account	90	0
12-2069-0-1-452	Rural Development Loan Fund Program Account	17	0
12-1908-0-1-451	Rural Energy for America Program	107	0
12-1980-0-1-452	Rural Waste and Waste Disposal Program Account	489	0
12-1230-0-1-271	Rural Electrification and Telecommunications Loans Program Account	40	0
12-1232-0-1-452	Distance Learning, Telemedicine, and Broadband Program	48	0
12-2900-0-1-352	Foreign Agricultural Service: Salaries and Expenses	231	0
12-2903-0-1-151	McGovern-Dole International Food for Education and Child Nutrition Program Grants	201	0
12-2278-0-1-151	Food for Peace Title II Grants	1,690	0
12-2277-0-1-351	Food for Peace Title I Direct Credit and Food for Progress Program Account	3	0
12-3508-0-1-605	Food and Nutrition Service: Nutrition Programs Administration	170	0
12-3505-0-1-605	Supplemental Nutrition Assistance Program	85,094	0
12-3505-4-1-605	Supplemental Nutrition Assistance Program	92	0
12-3539-0-1-605	Child Nutrition Programs	18,959	0
12-3510-0-1-605	Special Supplemental Nutrition Program for Women, Infants, and Children	7,391	0
12-3507-0-1-605	Commodity Assistance Program	271	0
12-1106-0-1-302	Forest Service: National Forest System	1,704	0
12-1103-0-1-302	Capital Improvement and Maintenance	350	0
12-1104-0-1-302	Forest and Rangeland Research	325	0
12-1105-0-1-302	State and Private Forestry	413	0
12-1115-0-1-302	Wildland Fire Management	1,922	0
12-1130-2-1-302	Forest Service Payments to Communities	328	0
12-5207-0-2-302	Range Betterment Fund	3	0
12-5540-0-2-302	Stewardship Contracting Product Sales	8	0
12-9923-0-2-302	Forest Service: Land Acquisition, Acqu. Of Lands for Natl Forests Special Acts	122	0
12-9921-0-2-999	Forest Service Permanent Appropriations	560	0
12-9974-0-7-302	Forest Service Trust Fund	85	0
Total (billions)		\$149,022	\$2,091

Department of Commerce

The Department of Commerce includes many programs which are little more than subsidies for private businesses and which derive no authority from the Constitution. However, it also includes the decennial census and various programs involving interstate commerce and ocean areas under U.S. jurisdiction. Unfortunately, the subsidy programs have often been mixed with legitimate programs in such a way as to make it difficult to separate their funding.

Economic Development Assistance, promoting fishery products, and Industrial Technology Services are among the subsidy programs that are clearly beyond constitutional authority.

The Bureau of Industry and Security is responsible for enforcing export controls, such as those which prevent the export of sensitive technology, in accordance with law. Damage Assessment and Restoration administers the law regarding damage done in areas outside of state jurisdiction, such as the BP oil spill of 2010. Both fit within the Constitutional functions of the Federal government.

The National Telecommunications and Information Administration, assisted by the Public Safety Innovation Fund, is involved in the allocation of commercial spectrum bands. This falls under interstate commerce regulation. However the Public Safety Broadband Network, judging by its description, is something more appropriate for state and local governments rather than a true Federal project.

The Census Bureau is assigned the task of carrying out a census every ten years for the purpose of apportioning congressional seats among the states. The Constitution mentions no other purpose, and the First Congress rejected an attempt to include the collection of economic information as well as a headcount. Although the one billion dollars for the Census Bureau in 2012 no doubt includes some necessary follow up on 2010 and preparation for 2020, the description in the proposed budget indicates that most of the money will be used for interim censuses which have no constitutional foundation.

The half-billion proposed for the International Trade Administration likewise contains what appears to be a small amount for the enforcement of trade laws amidst a much larger amount of subsidies. We have listed it as unconstitutional.

The National Oceanic and Atmospheric Administration is heavily involved in subsidizing the fishing industry and promoting the “global warming” hoax. The fact that it also carries out some legitimate functions for ocean safety is insufficient to save it from being listed as unconstitutional.

The \$140 million of the Department’s general administrative expenses has been counted as Constitutional, but could be drastically reduced if unconstitutional programs were eliminated. This may well offset whatever small amount of Constitutional spending is within several agencies that we have listed as unconstitutional. We conclude that taxpayers could save about \$10 billion by limiting the Department to Constitutional functions.

Department of Commerce

ID Code	Program Name	Authorized by Proposed Budget	Constitutional Amount
13-0120-0-1-376	Departmental Management: Salaries and Expenses	65	65
13-0126-0-1-376	Office of the Inspector General	34	34
13-0123-0-1-376	Herbert C. Hoover Building Renovation and Modernization	16	16
13-0119-0-1-376	Enterprise Cybersecurity Monitoring and Operations	23	23
13-8501-0-7-376	Gifts and Bequests	1	1
13-0125-0-1-452	Economic Development Administration: Salaries and Expenses	41	0
13-2050-0-1-452	Economic Development Assistance Programs	284	0
13-2050-4-1-452	Economic Development Assistance Programs	20	0
13-0401-0-1-376	Bureau of the Census: Salaries and Expenses	302	0
13-0450-0-1-376	Periodic Censuses and Programs	753	0
13-1500-0-1-376	Economic and Statistical Analysis: Salaries and Expenses	113	0
13-1250-0-1-376	International Trade Administration: Operations and Administration	517	0
13-5521-0-2-376	Grants to Manufacturers of Worsted Wool Fabrics	5	0
13-0300-0-1-999	Bureau of Industry and Security: Operation and Administration	111	111
13-0201-0-1-376	Minority Business Development Agency: Minority Business Development	32	0
13-1450-0-1-306	National Oceanic and Atmospheric Administration: Operations, Research, and Facilities	3,469	0
13-1460-0-1-306	National Oceanic and Atmospheric Administration: Procurement, Acquisition, and Construction	2,053	0
13-5284-0-2-306	Limited Access System Administration Fund	10	0
13-1451-0-1-306	Pacific Coast Salmon Recovery	65	0
13-5584-0-2-376	Sanctuaries Enforcement Asset Forfeiture Fund	1	0
13-1465-0-1-306	Medicare-Eligible Retiree Health Fund Contribution, NOAA	2	0
13-5583-0-2-376	Fisheries Enforcement Asset Forfeiture Fund	8	0
13-5139-0-2-376	Promote and Develop Fishery Products and Research Pertaining to American Fisheries	6	0
13-5362-0-2-302	Environmental Improvement and Restoration Fund	1	0
13-4316-0-3-306	Damage Assessment and Restoration Revolving Fund	3	3
13-4295-0-3-376	National Institute of Standards and Technology: Scientific and Technical Research and Studies	673	0
13-0525-0-1-376	Industrial Technology Services	237	0
13-0515-0-1-376	Construction of Research Facilities (for NIST)	85	0
13-4650-0-4-376	Working Capital Fund	9	9
13-0524-4-1-376	Public Safety Innovation Fund	100	100
13-0550-0-1-376	National Telecommunications and Information Administration: Salaries and Expenses	56	56
13-0557-4-1-376	Public Safety Broadband Network	1,400	0
Total (billions)		\$10,495	\$418

Department of Education, FY 2012

The Constitution mentions no Federal role in education. During the early years following the adoption of the Constitution, the closest that the Federal government came to subsidizing local education was setting aside small amounts of western land to be sold for the support of education when the surrounding area was sold to settlers. There was no continuing Federal involvement. Direct educational spending was limited to the military academies which fall under the Congressional power relating to the armed forces.

We have therefore concluded that only two programs might be properly considered to fall within the functions listed by Article I, Section 8.

Indian tribes living on reservations may be considered a Federal responsibility in a way that other American citizens are not, and it may be permissible to finance the education of their children.

Similarly, when the Federal government removes a portion of a state's land from state and local taxation by building a military installation, providing assistance in lieu of property tax revenue to the local schools for the education of children whose parents work (and perhaps even live) there could be considered a cost of maintaining the army and navy.

These two programs make up only \$1.5 billion of what has been proposed. Eliminating the remainder would save taxpayers more than \$108 billion next year.

Department of Education

ID Code	Program Name	Authorized by Proposed Budget	Constitutional Amount
91-0900-0-1-501	Accelerating Achievement and Ensuring Equity	10,841	0
91-0900-2-1-501	Accelerating Achievement and Ensuring Equity	4,571	0
91-0102-2-1-501	Impact Aid	1,276	1,276
91-1000-0-1-501	Education Improvement Programs	1,762	0
91-1000-2-1-501	Education Improvement Programs	1,584	0
91-0101-2-1-501	Indian Student Education	127	127
91-0204-2-1-501	Innovation and Instructional Teams	4,995	0
91-0204-4-1-501	Innovation and Instructional Teams	40	0
91-0203-2-1-501	Supporting Student Success	1,781	0
91-1300-2-1-501	English Learner Education	750	0
91-0300-0-1-501	Special Education	12,015	0
91-0300-2-1-501	Special Education	5	0
91-0301-0-1-506	Rehabilitation Services & Disability Research	3,541	0
91-0600-0-1-501	Special Institutions for Persons with Disabilities, APH for the Blind	25	0
91-0601-0-1-502	National Technical Institute for the Deaf	65	0
91-0602-0-1-502	Gallaudet University	118	0
91-0400-0-1-501	Career, Technical, and Adult Education	1,683	0
91-0201-0-1-502	Higher Education	2,720	0
91-0603-0-1-502	Howard University	235	0
91-0241-0-1-502	Historically Black College and University Capital Financing Program Account	21	0
91-0200-0-1-502	Student Financial Assistance	51,087	0
91-0200-4-1-502	Student Financial Assistance	7,135	0
91-0202-0-1-502	Student Aid Administration	1,342	0
91-0206-0-1-502	[TEACH Grant Program Account] <i>Teacher Education Assistance</i>	25	0
91-0206-4-1-502	Teacher Education Assistance	174	0
91-5557-0-2-502	Student Financial Assistance Debt Collection	10	0
91-0231-4-1-502	Federal Family Education Loan Program Account	283	0
91-1100-0-1-503	Institute of Education Sciences	760	0
91-0800-0-1-503	Program Administration	479	0
91-0700-0-1-751	Office for Civil Rights	108	0
91-1400-0-1-751	Office of the Inspector General	67	67
Total (billions)		\$109,625	\$1,470

Department of Energy

The Department of Energy is unusual in that it combines both military and civilian functions. While the military programs (related to nuclear energy) enjoy a presumption of Constitutional legitimacy, programs subsidizing the development and use of various types of energy for civilian use do not fall under any of the authorized Constitutional functions. There is nothing that makes it a Federal responsibility to encourage the use of certain types of energy over others, nor to find new sources of energy.

Although the Uranium Enrichment and Decommissioning Fund deals with a matter of interstate commerce, it makes the Federal government a participant in that commerce rather than merely a regulator, and therefore fails the test of Constitutionality.

Removing the civilian programs and retaining only those with military value would save the taxpayers more than \$12 billion.

Department of Energy

ID Code	Program Name	Authorized by Proposed Budget	Constitution al Amount
89-0313-0-1-053	National Nuclear Security Administration: Office of the Administrator	450	450
89-0314-0-1-053	Naval Reactors	1,154	1,154
89-0240-0-1-053	Weapons Activities	7,589	7,589
89-0309-0-1-053	Defense Nuclear Nonproliferation	2,519	2,519
89-0251-0-1-053	Defense Environmental Cleanup	5,407	5,407
89-0243-0-1-999	Other Defense Activities	860	860
89-0222-0-1-251	Energy Programs: Science	5,416	0
89-0337-0-1-270	Energy Transformation Acceleration Fund	550	0
89-0337-4-1-270	Energy Transformation Acceleration Fund	100	0
89-0319-0-1-999	Nuclear Energy	754	0
89-0318-0-1-999	Electricity Delivery and Energy Reliability	238	0
89-0321-0-1-270	Energy Efficiency and Renewable Energy	3,200	0
89-0315-0-1-271	Non-Defense Environmental Cleanup	219	0
89-0213-0-1-271	Fossil Energy Research and Development	453	0
89-0219-0-1-271	Naval Petroleum and Oil Shale Reserves	14	14
89-0218-0-1-274	Strategic Petroleum Reserve	122	122
89-0216-0-1-276	Energy Information Administration	124	0
89-5523-0-2-271	Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Research Fund	50	0
89-5105-0-2-806	Payments to States Under Federal Power Act	3	0
89-5231-0-2-271	Uranium Enrichment Decontamination and Decommissioning Fund	504	0
89-0322-0-1-272	Advanced Technology Vehicles Manufacturing Loan Program	6	0
89-0208-0-1-271	Title 17 Innovative Technology Loan Guarantee Program	200	0
89-0324-2-1-272	Better Buildings Pilot Loan Guarantee Initiative for Universities, Schools, and Hospitals	105	0
89-0303-0-1-271	Operation and Maintenance, Southwestern Power Administration	12	0
89-5068-0-2-271	Construction, Rehabilitation, Operation and Maintenance, Western Area Power Administration	96	0
89-4404-0-3-271	Western Area Power Administration, Borrowing Authority, Recovery Act	49	0
89-5178-0-2-271	Falcon and Amistad Operating and Maintenance Fund	1	0
89-4045-0-3-271	Bonneville Power Administration Fund	554	0
89-0228-0-1-276	Departmental Administration: Departmental Administration	129	129
89-0236-0-1-276	Office of the Inspector General	42	42
Total (billions)		\$30,920	\$18,286

Department of Housing and Urban Development

The topics in the name of this Department – “Housing” and “Urban Development” -- immediately cast doubt on the constitutionality of its programs. One may search the Constitution from beginning to end without finding anywhere any general authority for the Federal government to be involved in the building and maintenance of housing (although narrow exceptions such as military housing fall within the “necessary and proper” powers implied by the army and navy clauses). Not even the much-abused interstate commerce clause can be applied, since the Department’s programs usually promote, rather than regulate, an increase in the national housing stock, and subsidize the purchase of housing by those with lower incomes. Nor is there any attempt to distinguish between interstate and intrastate commerce in this field.

As for urban development, one would be hard-pressed to come up with any argument that the Framers of the Constitution were thinking about a direct Federal role. Some were doubtful about urbanization, and even those who looked forward to it saw the Federal role as indirect (i.e. through promotion of commerce, tariffs, and a sound fiscal policy). Alexander Hamilton, the foremost advocate of a highly commercial, industrial and urbanized America, was satisfied to recommend primarily those indirect means, while working through private capital, such as the Society for the Encouragement of Useful Manufactures, to carry out specific projects.

Only a few of the HUD programs could be considered a close call when determining their constitutionality. Those providing housing to American Indians on reservations might be seen as part of a permanent Federal responsibility. On the other hand, there seems to be no clear evidence that the Jefferson-Jackson policy of Indian removal envisioned a continuing Federal role in housing. This could have been a policy, rather than a Constitutional decision, so we have chosen to give these programs the benefit of the doubt, listing them as constitutional while recognizing that there are reasonable grounds for disagreement.

Regulation of interstate land sales falls comfortably within the interstate commerce clause, and the existence of an inspector general for the Department is obviously permitted (though his staff and budget would be much smaller if the Department’s unconstitutional programs were eliminated).

Our final conclusion is that barely 2% of the HUD budget can be defended as Constitutional, even with generous assumptions. The taxpayers would save \$47 billion per year if the unconstitutional programs were eliminated.

Department of Housing and Urban Development

ID Code	Program Name	Authorized by Proposed Budget	Constitutional Amount
86-0406-0-1-604	Transforming Rental Assistance	200	0
86-0302-0-1-604	Tenant-based Rental Assistance	19,223	0
86-0303-0-1-604	Project-Based Rental Assistance	9,429	0
86-0304-0-1-604	Public Housing Capital Fund	2,405	0
86-0163-0-1-604	Public Housing Operating Fund	3,962	0
86-0349-0-1-604	Choice Neighborhoods	250	0
86-0313-0-1-604	Native American Housing Block Grants	700	700
86-0235-0-1-604	Native Hawaiian Housing Block Grant	10	10
86-0223-0-1-371	Indian Housing Loan Guarantee Fund Program Account	7	7
86-0308-0-1-604	Housing Opportunities for Persons With AIDS	335	0
86-0162-0-1-451	Community Development Fund	3,804	0
86-0205-0-1-604	Home Investments Partnership Program	1,650	0
86-5553-4-2-604	Housing Trust Fund	1,000	0
86-0405-0-1-451	Housing Trust Fund - Capacity Building	50	0
86-0192-0-1-604	Homeless Assistance Grants	2,034	0
86-4015-0-3-451	Revolving Fund (Liquidating Programs)	1	0
86-0320-0-1-604	Housing for the Elderly	757	0
86-0237-0-1-604	Housing for Persons with Disabilities	196	0
86-0156-0-1-604	Housing Counseling Assistance	88	0
86-0206-0-1-999	Other Assisted Housing Programs/Rental Housing Assistance	9	0
86-0234-0-1-376	Payment to Manufactured Housing Trust Fund	7	0
86-5270-0-2-376	Interstate Land Sales	1	1
86-0343-0-1-371	Home Ownership Preservation Equity Fund Program Account	0	0
86-0183-0-1-371	FHA Mutual Mortgage Insurance Program Account	158	0
86-0200-0-1-371	FHA General and Special Risk Program Account	9	0
86-4105-0-3-371	FHA General and Special Risk Direct Loan Financing	0	0
86-4072-0-3-371	FHA General and Special Risk Insurance Funds Liquidating Account	12	0
86-8119-0-7-376	Manufactured Housing Fees Trust Fund	14	0
86-0108-0-1-451	Research and Technology	57	0
86-0144-0-1-751	Fair Housing Activities	72	0
86-0174-0-1-451	Lead Hazard Reduction	140	0
86-0408-0-1-452	Sustainable Housing and Communities Initiative	150	0
86-0335-0-1-999	Administration, Operations and Management	530	0
86-0337-0-1-604	Personnel Compensation and Benefits - Public and Indian Housing	190	190
86-0330-0-1-451	Community Planning and Development	100	0
86-0334-0-1-604	Housing (personnel compensation and benefits)	398	0
86-0339-0-1-451	Policy Development and Research	21	0
86-0340-0-1-751	Fair Housing and Equal Opportunity	71	0

86-0341-0-1-451	Office of Healthy Homes and Lead Hazard Control	7	0
86-0409-0-1-452	Office of Sustainable Housing and Communities	3	0
86-0333-0-1-604	Executive Direction	30	0
86-0189-0-1-451	Office of the Inspector General	126	126
86-4586-0-4-451	Working Capital Fund	315	0
Total	(billions)	\$48,521	\$1,034

Department of Interior

The U.S. Constitution provides the Federal government with clear but also limited authority to own land within the states. The purposes listed are “Forts, Magazines, Arsenals, and other needful buildings.” The phrase “other needful buildings” may only be read in the same way as the “necessary and proper” clause just below it. In other words, buildings needed to carry out the powers granted in Article I, Section 8 (e.g. Post Offices) and various other places within the Constitution come within Federal power, but there is no general authorization to buy land and erect buildings at the whim of Federal elected officials and bureaucrats for any other purpose.

Much of the Department of Interior’s budget relates to the enormous holding of Federal lands, especially in some western states. There is no Constitutional authorization for such vast land ownership, and the record is clear that at the time of the ratification of the Constitution it was assumed that the Federal government would sell, as rapidly as practical, the western lands it owned. Therefore, unless Federal property is related to a carrying out a Constitutional function, it is illegitimate and must be considered unconstitutional.

One possible Constitutional beachhead within the system of national parks, wilderness areas, etc. is the system of national military parks. These were originally created within the Department of War and were ostensibly intended to preserve battlefields for the study of military history, especially by the U.S. armed forces (though this was never intended to prohibit civilian visits). The President’s budget does not separate the expenses for these parks, nor is there any indication that the original purpose plays any significant role at the present time, and we have therefore proceeded to treat the entire park system as unconstitutional. However, we recognize that returning the parks to the jurisdiction of the Department of Defense would constitute a strong argument for their constitutionality, and therefore we may have slightly underestimated the amount of the Department’s budget that could be considered Constitutional.

Some programs also include funding to administer the sale of lands. In principle this could be considered Constitutional. However, the budget does not include a breakdown of these amounts, and it seems likely that they are only a small portion of the program funding. Furthermore, such expenses should not be permanent since the amount of Federal land is finite, and disposing of the land will end such expenses. We have therefore treated them as amounts that would be saved, at least in the long term, under Constitutional guidelines.

It should also be acknowledged that the transition to a Constitutional status should be gradual so as to avoid greatly depressing land values by quickly dumping everything on the market. Since the sale would likely extend over many years, some of the unconstitutional expenses related to managing and maintaining Federal lands would continue during the transition, but with steadily declining amounts.

During the early decades under the Constitution, the issue of “internal improvements” was a major Constitutional controversy. Some politicians argued that the Constitution provided open-ended authority for roads, canals, rivers and harbors improvements, etc.

without any requirement for a clear national purpose. President Jefferson insisted that the Constitution as written allowed no such thing. Presidents Madison, Monroe, and Jackson vetoed internal improvement bills. They were correct. Such projects are no more Constitutional today than they were previously. We have so treated them. Some projects, however, are genuinely national rather than local. We have included Federal flood control and navigation projects among these because of their interstate character, while recognizing that political influence may result in the funding of some purely local projects. (Anyone wishing for an edifying discussion of the distinction between national and local projects should read Richard Ellis' description of President Jackson's view, found on pages 19-25 of Ellis' *The Union at Risk: Jacksonian Democracy, States' Rights and the Nullification Crisis*.)_

The Department has been assigned Constitutional functions. Managing resources not within any state (e.g. offshore oil drilling) can only be a Federal responsibility.

Indian affairs are another Constitutional field. The Constitution recognizes that Indian nations that are not subject to the state governments have a special relationship with the Federal government, and the Supreme Court has described them as "domestic dependent nations". Regardless of whether the reservation system is either wise or just, it is within the bounds of Constitutional authority.

Although we have concluded that less than 23% of the Department of Interior budget is Constitutional.

Department of the Interior

ID Code	Program Name	Authorized by Proposed Budget	Constitution al Amount
14-1109-0-1-302	Bureau of Land Management: Management of Lands and Resources	934	0
14-1110-0-1-302	Bureau of Land Management: Construction	4	0
14-1116-0-1-302	Oregon and California Grant Lands	112	0
14-5033-0-2-302	Land Acquisition	50	0
14-5132-0-2-302	Range Improvements	10	0
14-5017-0-2-302	Service Charges, Deposits, and Forfeitures	32	0
14-9926-0-2-302	Permanent Operating Funds	52	0
14-9926-4-2-302	Permanent Operating Funds	5	0
14-9921-0-2-999	Miscellaneous Permanent Payment Accounts	44	0
14-9971-0-7-302	Miscellaneous Trust Funds	22	0
14-1917-0-1-302	Ocean Energy Management [Royalty and Offshore Minerals Management]	118	118
14-5243-0-2-302	National Forests Fund, Payment to States	8	0
14-8370-0-7-302	Oil Spill Research	14	14
14-1801-0-1-302	Office of Surface Mining Reclamation and Enforcement: Regulation and Technology	118	0
14-5015-0-2-999	Abandoned Mine Reclamation Fund	320	0
14-1803-0-1-999	Payments to States in Lieu of Coal Fee Receipts	270	0
14-1804-0-1-551	Supplemental Payments to UMWA Health Plans	161	0
14-0680-0-1-301	Water & Science: Water and Related Resources	789	0
14-0687-0-1-301	California Bay-Delta Restoration	40	0
14-2636-0-1-301	Indian Water Rights Settlements	111	111
14-5065-0-2-301	Policy and Administration	60	0
14-5173-0-2-301	Central Valley Project Restoration Fund	53	0
14-5656-0-2-301	Colorado River Dam Fund, Boulder Canyon Project	107	0
14-5537-0-2-301	San Joaquin Restoration Fund	33	0
14-4079-0-3-301	Lower Colorado River Basin Development Fund	6	0
14-4081-0-3-301	Upper Colorado River Basin Fund	11	0
14-8070-0-7-301	Reclamation Trust Funds	3	0
14-0787-0-1-301	Central Utah Project: Central Utah Project Completion Account	31	0
14-5174-0-2-301	Utah Reclamation Mitigation and Conservation Account	2	0
14-0804-0-1-306	US Geological Survey: Surveys, Investigations, and Research	1,018	0
14-2630-0-1-306	National Land Imaging	100	0
14-8562-0-7-306	USGS: Contributed Funds	1	0
14-1611-0-1-302	US Fish and Wildlife Service: Resource Management	1,272	0
14-1612-0-1-302	US Fish and Wildlife Service: Construction	23	0
14-1652-0-1-302	Multinational Species Conservation Fund	10	0
14-1696-0-1-302	Neotropical Migratory Bird Conservation	5	0
14-1694-0-1-302	State and Tribal Wildlife Grants	95	0

14-5020-0-2-302	Land Acquisition	140	0
14-5137-0-2-303	Migratory Bird Conservation Account	44	0
14-5137-4-2-303	Migratory Bird Conservation Account	14	0
14-5241-0-2-302	North American Wetlands Conservation Fund	51	0
14-5143-0-2-302	Cooperative Endangered Species Conservation Fund	154	0
14-5091-0-2-806	National Wildlife Refuge Fund	6	0
14-5252-0-2-303	Recreation Enhancement Fee Program, FWS	5	0
14-5029-0-2-303	Federal Aid in Wildlife Restoration	403	0
14-9927-0-2-302	Miscellaneous Permanent Appropriations	4	4
14-8151-0-7-303	USFWS: Sport Fish Restoration	461	0
14-8216-0-7-302	USFWS: Contributed Funds	4	0
14-1036-0-1-303	National Park Service: Operation of the NPS	2,297	0
14-1042-0-1-303	National Recreation and Preservation	52	0
14-1039-0-1-303	NPS: Construction	152	0
14-5035-0-2-303	NPS: Land Acquisition and State Assistance	360	0
14-9928-0-2-303	NPS: Recreation Fee Permanent Appropriations	184	0
14-5140-0-2-303	Historic Preservation Fund	61	0
14-9924-0-2-303	NPS: Other Permanent Appropriations	151	0
14-9972-0-7-303	NPS: Miscellaneous trust Funds	30	0
14-2100-0-1-999	Bureau of Indian Affairs and Bureau of Indian Education: Operation of Indian Programs	2,360	2,360
14-2301-0-1-452	Construction	105	105
14-2204-0-1-452	White Earth Settlement Fund	2	2
14-2303-0-1-452	Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians	33	33
14-5051-0-2-452	Operation and Maintenance of Quarters	6	6
14-9925-0-2-452	Miscellaneous Permanent Appropriations	99	99
14-2628-0-1-452	Indian Guaranteed Loan Program Account	3	3
14-0102-0-1-306	Departmental Offices: Office of the Secretary, Departmental Operations	284	284
14-5003-0-2-999	Mineral Leasing and Associated Payments	2,070	0
14-5045-0-2-806	National Petroleum Reserve, Alaska	3	0
14-5248-0-2-302	Leases of Lands Acquired for Flood Control, Navigation, and Allied Purposes	2	2
14-5574-0-2-806	Geothermal Lease Revenues, Payment to Counties	7	0
14-0415-0-1-808	Compact of Free Association	206	0
14-0415-4-1-808	Compact of Free Association	29	0
14-0418-0-1-806	Payments to the United States Territories, Fiscal Assistance	145	145
14-0412-0-1-808	Assistance to Territories	94	94
14-0107-0-1-306	Office of the Solicitor: Salaries and Expenses	68	68
14-0104-0-1-306	Office of the Inspector General: Salaries and Expenses	49	49
14-0120-0-1-808	Office of the Special Trustee for American Indians: Federal Trust Programs	152	152
14-5265-0-2-452	Tribal Special Fund	280	280
14-8030-0-7-452	Tribal Trust Fund	78	78
14-5141-0-2-806	National Indian Gaming Commission, Gaming Activity Fees	17	17

14-1114-0-1-806	Department-Wide Programs: Payments in Lieu of Taxes	380	0
14-1121-0-1-304	Central Hazardous Materials Fund	10	10
14-1618-0-1-302	Natural Resource Damage Assessment and Restoration: Natural Resource Damage Assessment Fund	63	0
14-1125-0-1-302	Wildland Fire Management	822	0
14-4523-0-4-306	Working Capital Fund	73	73
Total (billions)		\$18,057	\$4,107

Department of Labor

Most programs of the Department of Labor, primarily related to dealing with unemployment, have no basis in any of the Federal responsibilities enumerated in the U.S. Constitution. Neither unemployment insurance nor job training can fit even within a reasonable understanding of regulating interstate commerce. The Trade Adjustment Assistance Act programs, designed to help workers who have lost their jobs because of foreign competition, do have a peripheral connection with the regulation of commerce with foreign nations. However, the failure of Congress to carry out one Constitutional function does not create new, unenumerated Federal responsibilities. One might as well argue that if Congress fails to provide for border security, it then creates a Federal power to overturn the Fourth Amendment in order to search houses – without probable cause – for the illegal immigrants who have entered the country.

There are a few exceptions within this budget. Regulation of legal immigration appears to justify the Foreign Labor Certification Processing. At least some enforcement of ERISA (regulating pension plans) may be justified under interstate commerce, and we have given the entire program the benefit of the doubt. The Office of Workers' Compensation Programs oversees Federal employees and workers engaged in international or interstate commerce, and we have included the entire program as Constitutional rather than attempt to verify every element.

The Panama Canal Commission Compensation Fund is a remnant of the now-defunct Panama Canal Commission, which operated the canal during the period that the Canal Zone was owned by the United States. The Office of Federal Contract Compliance enforces certain requirements attached to the acceptance of Federal contracts. Some assistance to military veterans falls under the Constitutional power relating to the armed forces.

The headquarters element of the Department's budget, such as the Inspector General's office, has been counted as Constitutional, since it oversees some Constitutional programs. However, it should be noted that this portion of the budget would be much smaller if all of the unconstitutional programs were removed, leaving a very small Department to be managed.

In conclusion, we find that the Department of Labor, if reduced to Constitutional size, would have a budget of less than 1% of what the President has proposed for FY 2012.

Department of Labor

ID Code	Program Name	Authorized by Proposed Budget	Constitution al Amount
16-0174-0-1-504	Training and Employment Services	3,752	0
16-0181-0-1-504	Office of Job Corps	1,700	0
16-0187-0-1-504	TAA Community College and Career Training Grant Fund	500	0
16-0326-0-1-999	Federal Unemployment Benefits and Allowances	1,100	0
16-0326-4-1-999	Federal Unemployment Benefits and Allowances	571	0
16-0179-0-1-999	State Unemployment Insurance and Employment Service Operations	161	0
16-0178-0-1-603	Payments to the Unemployed Trust Fund	22,171	0
16-0172-0-1-504	Program Administration	107	0
16-0185-0-1-505	States Paid Leave Fund	23	0
16-5507-4-2-505	Foreign Labor Certification Processing	44	44
16-8042-0-7-999	Unemployment Trust Fund	97,586	0
16-8042-0-7-999	Unemployment Trust Fund	-92	0
16-8042-4-7-999	Unemployment Trust Fund	36	0
16-1700-0-1-601	Employee Benefits Security Administration: Salaries and Expenses	198	198
16-0105-0-1-505	Office of Workers' Compensation Programs: Salaries and Expenses	121	121
16-1521-0-1-600	Special Benefits	350	350
16-1523-0-1-053	Energy Employees Occupational Illness Compensation Fund	977	0
16-1524-0-1-053	Administrative Expenses, Energy Employees Occupational Illness Compensation Fund	126	0
16-0169-0-1-601	Special Benefits for Disabled Coal Miners	182	0
16-5155-0-2-602	Panama Canal Commission Compensation Fund	6	6
16-8144-0-7-601	Black Lung Disability Trust Fund	300	0
16-9971-0-7-601	Special Workers' Compensation Expenses	149	0
16-0143-0-1-505	Wage and Hour Division: Salaries and Expenses	292	0
16-0148-0-1-505	Office of Federal Contract Compliance Programs: Salaries and Expenses	109	109
16-0150-0-1-505	Office of Labor Management Standards: Salaries and Expenses	41	0
16-0400-0-1-554	Occupational Safety and Health Administration: Salaries and Expenses	583	0
16-1200-0-1-554	Mine Safety and Health Administration: Salaries and Expenses	384	0
16-0200-0-1-505	Bureau of Labor Statistics: Salaries and Expenses	578	0
16-0165-0-1-505	Departmental Management: Salaries and Expenses	371	371
16-0166-0-1-505	Office of Disability Employment Policy	39	0
16-0106-0-1-505	Office of Inspector General	78	78
16-0164-0-1-702	Veterans Employment and Training	49	49
16-0162-0-1-505	Information Technology Modernization	25	25
16-4601-0-4-505	Working Capital Fund	5	5
Total (billions)		\$132,622	\$1,356